

In the Matter of Merchant Mariner's Document No. Z-773266 and all
other Seaman Documents
Issued to: JUNEIOUS MOORE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1069

JUNEIOUS MOORE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 September 1957, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a bedroom steward on board the U.S.N.S. MUIR WOODS under authority of the document above described, on or about 17 May 1957, Appellant assaulted crew member James L. Scott with a dangerous weapon, to wit: a fire ax.

At the hearing, Appellant entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence the testimony of the seaman allegedly assaulted, James L. Scott and two eyewitnesses to the incident.

In defense, Appellant offered in evidence his sworn testimony and that of the ship's Master. The Master testified as to Appellant's general dependability and good reputation for veracity. Appellant stated that he picked up the fire ax to use in self-defense after he was cut with a razor wielded by Scott.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 17 May 1957, Appellant was serving as acting steward on board the U.S.N.S. MUIR WOODS and acting under authority of his Merchant Mariner's Document No. Z-773266 while the ship was departing from Guam.

At approximately 1700 on this date, Appellant and fireman-watertender James. L. Scott engaged in a heated argument after Scott made a disparaging remark about the food Appellant was serving. When Appellant reached for his hip pocket, Scott pulled out a straight razor but he was persuaded by another member of the crew not to open it. Scott put the razor back in his pocket and started to walk away with his back to Appellant. The latter rushed to the bulkhead, took a fire ax from its bracket and rushed toward Scott with the ax held in an upraised position. Someone shouted a warning and Scott turned in time to side-step the blow from the ax as Appellant swung it. The ax struck the bulkhead and dropped from Appellant's grasp. Appellant and Scott commenced grappling. When Appellant refused to stop biting Scott's finger, Scott took out his razor and cut Appellant several times.

Appellant has no prior disciplinary record with the Coast Guard.

As a result of this incident, Scott's documents were also revoked.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1. The charges were not conclusively established by the credible evidence. Scott made the first overt act by pulling out a razor and this justified Appellant's use of the ax in self-defense. The Examiner improperly treated the drawing of the razor and the use of the ax as two separate incidents.

2. Alternatively, the order of revocation is too severe. Appellant has been going to sea since 1945 without any trouble. He is the sole support of several members of his family. Scott was not injured by the ax and Appellant had no intention of inflicting bodily harm on Scott. Hence, it is respectfully submitted that the order should be modified to a probationary suspension.

Appearance on appeal: Harry Ruderman, Esquire, Of New York City, of Counsel

OPINION

Although not raised on appeal, an important issue present in this case will be mentioned because it is a jurisdictional matter. The Investigating Officer did not offer, and the Examiner did not require, evidence to show that Appellant was "acting under the authority of his document" while serving on this M.S.T.S.

(U.S.N.S.) ship - a public vessel. Nevertheless, I take official notice from the records of the U.S. Coast Guard that jurisdiction is established by the fact that Shipping Articles were signed for the voyage in question. Appellant was signed on articles from 12 August 1956 to 20 August 1957. When seamen sign articles, they are required to produce their documents. 46 CFR 14.05-15. Therefore, they are acting under the authority of such documents since their employment is dependent thereon.

Evidence should always be included in the record to show that the Coast Guard has jurisdiction to take action against a seaman serving on an M.S.T.S. vessel. This may be done by producing the Shipping Articles, a Certificate of Inspection for the ship which includes specific manning requirements or other evidence showing that possession of a document was, in fact, a condition of employment.

Appellant's contention that the charge was not proved by credible evidence is without merit. The Examiner as the trier of the facts was in the best position to judge the credibility of the witnesses who appeared before him. The Examiner accepted the testimony of Scott and two eyewitnesses to the incident that Scott was walking away with his back to Appellant when the latter started to attack Scott with the fire ax prior to the time when Scott used his razor to cut Appellant. The Examiner specifically rejected Appellant's testimony that he only used the ax after he was cut by Scott with his razor. Hence, Appellant's claim of self-defense cannot prevail because any danger to him had certainly terminated by the time Scott replaced his razor and turned his back on Appellant. See 5 C.J., Assault and Battery, sec. 235. The testimony accepted by the Examiner as credible constitutes substantial evidence that Appellant was guilty of an assault upon Scott.

With respect to Appellant's request for clemency, it is noted that the Examiner considered Appellant's prior clear record and the favorable testimony of the Master before revoking Appellant's documents. I agree that the order of revocation is a suitable one in the case of a seaman who has displayed such dangerous proclivities toward a fellow crewman. Scott might have been seriously injured or killed except for the timely warning to Scott by another seaman. Regardless of Appellant's prior clear record and the personal hardship involved, other seamen should not be exposed unnecessarily to the danger of such an attack as was directed toward Scott by the Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 23

September 1957 is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 8th of September 1958.